

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NEWSTAR FRESH FOODS, LLC**

**Employer**

**and**

**Case 28-RC-6251**

**GENERAL TEAMSTERS, WAREHOUSE  
AND HELPERS UNION, LOCAL 890,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO<sup>1</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner, by its amended petition, seeks an election in a unit comprised of all cooler employees, also called warehouse employees, employed at the Employer's Yuma, Arizona facility, including loaders, pre-stagers, rotators, receivers, delivery truck drivers, sanitation employees, battery changers, general laborers, 12-pallet and tube operators, but excluding quality assurance employees, dispatchers, office clerical employees and supervisors as defined in the Act. Petitioner also seeks to include Yuma employees who annually work seasonally at the Employer's Lemoore, California facility. The petitioned-for unit is comprised of about 57 employees. Contrary to the Petitioner, the Employer contends that the only appropriate unit is a wall-to-wall unit of the Employer's Yuma employees, which would include not only all cooler employees, but all production employees, also called "processing" or "value-added" employees, employed at the Yuma facility. The Employer's proposed unit would be comprised of about 137 employees. The Employer further contends that inclusion of Yuma employees that annually work seasonally at the Employer's Lemoore facility would be inappropriate.

Based upon the reasons more fully set forth below, I find that the unit sought by the Petitioner is appropriate. I conclude that the Yuma cooler employees lack any meaningful community of interest with Yuma production employees to mandate their inclusion in the same unit. The two groupings of employees receive different wage rates, have different skill levels, varied work functions, infrequent transfers, and there is no evidence of temporary transfers between the two groups. Additionally, the processes engaged in by both cooler and production employees are not substantially integrated, and the production employees do not process a substantial majority of the products handled by the cooler employees. Finally, the

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<sup>1</sup> The name of the Petitioner appears as corrected at the hearing.

parties' collective bargaining history at the Employer's main facility in Salinas, California, establishes separate and distinct units covering the cooler employees and the production employees.

In concluding that the Lemoore cooler employees should be included in the bargaining unit found appropriate herein, I have relied on such factors as the Employer regularly detailing a group of Yuma cooler employees to work for two short stints each year at its Lemoore facility; the skills and duties of the Yuma and Lemoore cooler employees are identical; the wages and benefits of the Lemoore contingent are identical to the wages and benefits of Yuma cooler employees, except that the Employer pays per diem and wage premium to those Yuma cooler employees detailed to Lemoore; the Lemoore and Yuma facilities are somewhat integrated with the Employer operating its Lemoore facility during two four-week to five-week periods when the Employer is ramping up or ramping down its Yuma operation; and the supervision, personnel, and labor relations policies at both facilities are identical.

## DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. **Jurisdiction:** The parties stipulated that the Employer, NewStar Fresh Foods, LLC, a California limited liability corporation, with an office and place of business in Yuma, Arizona, is engaged in the business of growing, shipping, and distributing fresh vegetables. During the 12-month period preceding the hearing in this matter, the Employer, in the course and conduct of its business operations, purchased and received at its Yuma facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Arizona. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.
3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. **Unit Finding:** The primary issue presented in this case is whether a unit comprised of all cooler employees employed by the Employer in Yuma, Arizona, and Lemoore, California, is an appropriate unit, or, whether the only appropriate unit is a

wall-to-wall unit of Yuma cooler and production employees. To provide a context for my discussion of this issue, I will present background facts regarding the Employer's operations, job functions, wages, hours, and other terms of employment of the Yuma and Lemoore employees, the interchange and contacts between these employees, the supervisory hierarchy, the parties' collective-bargaining history, case law regarding community of interest and multi-facility locations, and my conclusions.

## **A. The Employer's Operations**

The Employer is a shipper, receiver and processor of agricultural products, called "produce," including broccoli, cauliflower, lettuce, spinach and other vegetables. Its main office is located in Salinas, California, where it operates a cooler facility and a separate production facility where produce is processed. The cooler facility is located less than one mile from the production facility. These facilities are operated during the Salinas growing season from about April to November. The Employer has a similar cooler and production operation located in Yuma, Arizona, that it operates during the Yuma growing season from about December to March. The Employer also operates a cooler facility in Lemoore, California, during a four-week to five-week period in March and April and, then again, a five-week period in October and November. The Employer operates yet another food processing plant in Mexicali, Mexico.

## **B. The Employee Complements at the Yuma Facility**

### **1. Cooler Employees**

At the Employer's 23-acre Yuma facility, fresh produce is unloaded from trucks, stored in one of two refrigerated warehouses, also called coolers, in which inventory is organized for both shipping docks and processing, and loaded onto trucks. Approximately 57 employees, referred to as cooler or warehouse employees, are engaged in this process. These cooler employees receive, store, and ship produce received from three different sources: produce packed in the agricultural fields; produce processed at the Employer's Mexicali facility; and produce processed at the value-added or production portion of the Yuma facility. These sources comprise 40%, 25%, and 35%, respectively, of the 5.5 to 6 million cartons of agricultural products yearly received or shipped by the Yuma cooler employees.

Products received at the Yuma facility arrive with purchase orders. Cooler employees identify the purchase order number and create pallet tags to permit tracing of the product. Cooler employees operating 12-pallet forklifts or smaller forklifts, unload produce, and store it in one of the facility's two coolers.

About 47 of the 57 Yuma cooler employees are cooler forklift operators. The forklift operators include receivers who unload products from trucks at the dock area, rotator forklift operators working in the cooler and rotating the stock to maintain freshness, and loader and pre-stager forklift operators who put pallets on trucks that return to the fields. There are three cooler employees who work as tube operators/12-pallet forklift operators, employees who primarily work in the pallet yard, located adjacent to the Yuma building. In addition, the

Employer employs two delivery truck drivers who are required to have certified driver licenses to drive trucks in and around the Yuma area, receiving and delivering products. The Employer also employs an unspecified number of cooler quality control technicians who, working at the receiving areas, evaluate the quality of the produce.

There are five general laborers working in the cooler, including sanitation employees; pallet yard personnel, who help re-load returnable plastic containers and pallets; re-packers, who re-pack damaged boxes; and battery changers, who service the forklifts including changing or charging batteries in the battery-driven forklifts that are used inside the facility.

## **2. Production or Processing Employees**

Aside from the 57 cooler employees, about 80 employees at the Yuma facility work in production, also called “processing.” Forklift operators from the production side of the facility (production forklift operators) retrieve produce from a holding area in the cooler and take them to the production area. A bin dumper loads the produce onto a conveyor where the produce is washed, dried through a spin dryer, weighed, and bagged. Produce is then boxed and placed on pallets with a new tag. This production process, also referred to as value-added operations, takes place in several separate rooms, adjacent to the coolers, segregated from each other and the coolers by walls and doors, so as to avoid cross-contamination of food products. Once the processed products are returned to the coolers, the processed food products, like the field-packed products and the processed food products from Mexico, are inventoried and loaded onto trucks by production employees.

Approximately 53 of the 80 Yuma production or “processing” employees are production general laborers who process some of the produce, adding value to it. They make boxes, place bags of produce into boxes, seal boxes, place boxes on pallets, pick up spilled produce, and rearrange pallets. The production side has about nine production sanitation employees performing sanitation work around conveyer belts and about six packaging machine operators. Four production forklift operators transport raw produce from the cooler to the processing area and about four quality assurance technicians evaluate the quality of the produce in the production areas. The production side also has three maintenance employees and a single packaging machine technician.

Certain cooler and production employees share similar job classification titles such as “forklift operators” and “general laborers.” However, there are differences between these classifications as they are applied to cooler employees and production employees. The Employer requires its Yuma cooler employees, but not its Yuma production employees, to have a command of English language skills so that they can understand the inventory paperwork and communicate with truck drivers. Forty-six cooler-side forklift operators and four production-side forklift operators have general forklift operating skills and receive the same forklift certification. However, the cooler forklift operators have more technical driving skills than production forklift operators who take raw products from the cooler to the processing area and processed products to the cooler. Cooler forklift operators select cooler products to fill a customer’s order, closely maneuvering around traffic as they load tractors at the facility’s busy 16 loading docks. When in the coolers, the cooler forklift operators are

required to be skilled at maneuvering their forklifts in close quarters. Cooler forklift employees, when on the dock, have one-on-one discussions with truck drivers and know how to deal with manifests and fill out paperwork to ensure that produce deliveries are traceable. Cooler forklift operators use both electric and propane forklifts, whereas production forklift operators use only electric forklifts. Because of the additional skills required of the cooler forklift operators, they receive higher wages from \$8.50 to \$11.50 an hour, whereas production forklift operators earn from \$7.00 to \$7.25 an hour.

The five general laborers working in the coolers routinely engage in heavy lifting, whereas the 53 laborers working on the production side do not. Cooler laborers earn from \$7 to \$8 an hour, while production laborers earn from \$6.45 to \$6.80 an hour. Both the cooler and production operations employ sanitation employees, but the production sanitation workers frequently work around machinery and conveyor belts and are required to be extensively familiar with chemicals and machinery clean-up procedures. The cooler sanitation employees are not. Sanitation employees for both the cooler and production sides earn about \$7.50 an hour.

Cooler and production employees are paid on the same weekly payday, receive the same health care coverage, receive the same employee handbook, and are subject to the same Employer handbook policies and procedures. All employees, whether on the cooler-side or production-side are required to punch time clocks. One time clock is located in the cooler area and used by cooler employees, and another is located in the production area and used by production employees. Likewise, cooler employees park their personal vehicles in an area of the parking lot close to the coolers, whereas production employees park their vehicles in an area of the parking lot near the production area. Similarly, cooler employees use a break room and lunch area on the cooler side of the facility, while production employees use a break room and lunch area on the production side of the facility.

Yuma cooler employees are divided into several small crews, with staggered starting times posted weekly on a schedule. In contrast, Yuma production employees work on either the day shift that starts from 6:00 a.m. to 10:00 a.m., or the evening shift, that begins about eight hours later. Production employees do not have set starting times, but are informed on a daily basis when to report to work the following day, with starting times varying based upon the arrival time of produce. Day shift production employees are daily told by their supervisor when they are to report to work the following day, and night shift production employees daily telephone the facility to determine their starting times.

Cooler employees and production employees wear different work clothes. Cooler employees are required to wear warm clothing and hard hats, and production employees are required to wear white smocks, hairnets, and a lighter hat, called a bump cap. Permanent transfers between the cooler and production employees have been very infrequent. Since 1998, there have been only two or three instances where production employees permanently transferred to cooler positions. There is no evidence of any Yuma cooler employees ever having transferred to the production department. In addition, there is no evidence of temporary transfers between Yuma cooler and production employees.

There is an unknown number of dispatchers and quality assurance technicians employed at the Yuma facility. The Employer and petitioner seek to exclude those classifications from the bargaining unit.

### **C. Supervisory Hierarchy and Personnel Management**

Yuma cooler and production employees are separately supervised. The two highest managers at the Yuma facility are District Manager Dwight Peay and Plant Manager Domingo Escamilla. Peay oversees the cooler/warehouse operations, and Escamilla oversees the production operations at the Yuma facility. Peay and Escamilla appear to be at the same level of the supervisory hierarchy and are in communication with each other so as to coordinate product flow, address matters such as packaging issues, product mismarking or misrotation, and facility appearance. Cooler employees are directly supervised by either a single maintenance supervisor or one of four shift supervisors that report to Peay. Peay reports to Employer Vice-President of Distribution Mike Yanez, who works at the Salinas facility. Production employees are supervised by three line supervisors who report to three higher-level supervisors or to the production-side sanitation supervisor. Production-side supervisors all report to Escamilla. Escamilla reports to Vice President of Production Leonard Batti, who is located in Salinas. The parties stipulated, and I find, that Peay, Escamilla, Yanez, and Batti are supervisors within the meaning of Section 2(11) of the Act.

Two Human Resource (HR) representatives work at the Yuma facility and report to Human Resources Director Greg Simvoulakis in Salinas. HR Representative Maggie Amador generally handles the cooler-side of the operation and HR Representative Sarah Lopez handles the production-side. Simvoulakis and his five-person staff oversee human resources matters at the Employer's Salinas, Yuma, Lemoore, and Mexicali facilities. Local Yuma managers have the authority, and exercise the authority, to interview and hire employees for Yuma. In addition, the two Yuma HR representatives, a Salinas HR representative, and a local manager participate in hiring employees through the State of Arizona Department of Employment Services. Local Yuma supervisors also have the authority to issue discipline to employees up to, and including, suspending employees pending investigation. Simvoulakis only becomes involved when an employee is suspended or when a discharge decision is involved. Local Yuma supervisors schedule employee work hours and vacation requests. A management group consisting of each of the Employer's vice presidents, operation managers, and Simvoulakis, set and change the wage levels of different job classification of employees at each of the Employer's facilities and centrally decide fringe benefits and work rules for employees.

### **D. The Employer's Lemoore Operations**

In addition to the Yuma cooler employees, the Petitioner seeks to represent a group of Yuma cooler employees that twice, annually, work seasonally in Lemoore. The Employer only utilizes its Lemoore facility during a four-week to five-week period in March and April, and then again for a five-week period in October and November. The Employer hires no employees locally at the Lemoore facility, but instead temporarily details a Yuma cooler supervisor and 12 to 17 Yuma cooler employees to the Lemoore facility during Lemoore's

operational periods. The same core group of Yuma cooler employees is detailed to Lemoore, including cooler forklift operators, tube operators, and 12-pallet/tube operators. These Yuma cooler employees perform the identical work as performed in Yuma at the Lemoore facility during its seasonal operational periods. The Lemoore facility is about 450 to 460 miles from the Yuma facility and 130 miles from the Employer's Salinas facilities. To compensate the Yuma cooler employees for traveling to Lemoore, Yuma cooler employees are paid one or two dollars more per hour and a daily per diem. While at the Lemoore location, the Yuma cooler employees live either in Employer-owned trailers or personally-owned trailers.

#### **E. Bargaining History at the Employer's Salinas Operations**

The Employer currently recognizes the Petitioner as the representative of a bargaining unit of cooler employees at its Salinas facility, and recognizes a separate and distinct bargaining unit of production employees located near that cooler facility. In Salinas, the cooler facility is a few hundred yards from the production facility. The Salinas facility is about 130 miles from the Lemoore facility and 585 miles from the Yuma facility. The Employer and Petitioner have a collective-bargaining agreement covering the Salinas production, or processing, facility employees that is in effect between November 1, 2001 and October 31, 2004. As set out in the Decision and Certification of Representative in *NewStar Fresh Foods, LLC*, Case 32-RC-4516, dated December 16, 1998, the following production employees of the Employer constitute the production bargaining unit:

All regular and seasonal full-time and regular part time production and maintenance employees, including all plant quality assurance employees and mechanics, and all finished products delivery drivers, employed by the Employer at its spinach-kale-parsley-cilantro facility located in Salinas, California.

A separate collective-bargaining agreement covering the Salinas cooler employees was in effect from January 1, 1999 to December 31, 2002, and has recently been negotiated for a new period. In those agreements, the Employer recognizes the Petitioner as the sole and exclusive collective-bargaining agent for all of its cooler employees engaged in the consolidation and handling of produce at the Employer's Salinas loading dock and all mechanics primarily employed at the Employer's Salinas loading dock.

#### **F. Legal Analysis and Determination**

Section 9(b) of the Act provides that "the Board shall decide in each case whether to assure to employees fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof." It is well established under Board law that the Act does not require the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Overnight Transportation Co.*, 322 NLRB 723 (1996). An appropriate unit insures to employees "the fullest freedom in exercising the rights guaranteed by the Act." *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7<sup>th</sup> Cir. 1951); *Dinah's Hotel and Apartments*, 295 NLRB 1100 (1989). A union is not required to seek representation in the most comprehensive grouping of employees

unless “an appropriate unit compatible with the requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1962). Furthermore, in *Pacemaker Mobile Homes*, 194 NLRB 742, 743 (1971), the Board explained that when no other labor organization is seeking a unit larger or smaller than the unit requested by the petitioner, the sole issue to be determined is whether the unit requested by the petitioner is an appropriate unit.

In determining whether a petitioned-for unit is an appropriate unit, the Board addresses whether the employees share a community of interest. *Home Depot*, supra, 331 NLRB at 1290. In *Home Depot*, the Board stated that factors it considers in determining community of interest among different groups of employees include: differences in method of wages or compensation, hours of work, employment benefits, job functions and amount of working time spent away from the employment or plant situs; infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and history of bargaining. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). None of the above factors has controlling weight, and there are no per se rules to include or exclude any classification of employees in any unit. *Airco, Inc.*, 273 NLRB 348, 348 (1984).

The Petitioner is essentially requesting a bargaining unit of warehouse employees in a non-retail setting. The main distinction between the cooler employees involved herein and warehouse employees in a traditional warehouse bargaining unit is that cooler employees transport produce to and from refrigerated environments. In *Esco Co.*, 298 NLRB 837, 840-841 (1990), the Board stated that in deciding the appropriateness of a non-retail warehouse unit, the Board will examine all relevant community of interest factors. The Board declared that the principles enunciated in *A. Harris & Co.*, 116 NLRB 1628 (1956), do not apply to warehouse units in wholesale or non-retail operations. In *A. Harris*, the Board found that a warehouse unit was appropriate where the employer’s warehouse operation was geographically separated from its retail operations; the warehouse operation employees were separately supervised; and there was no substantial integration among the warehouse employees and employees engaged in other functions.

Applying the foregoing legal principles to the record before me, I find that the cooler employees have a distinct community of interest from that of the production or processing employees at the Yuma facility. In reaching this conclusion, I rely on several factors. First, with respect to wages, hours, and benefits, although both groups of employees receive the same health plan coverage benefits, the cooler employees receive higher wages than the production employees. The vast majority of the warehouse employees, approximately 47 of the 57 employees, are forklift operators earning from \$8.50 to \$11.50 an hour. The four production forklift operators, earning from \$7.00 to \$7.25 an hour, earn significantly less. Similarly, approximately 53 of the 80 production employees are general laborers earning from \$6.45 to \$6.80 an hour, while the approximately six cooler general laborers earn between \$7 and \$8 an hour. As to hours of employment, production employees have no set starting time in contrast to cooler employees who start work each day according to a weekly-posted schedule.



Second, there are significant differences in work functions, skills, and duties. The vast majority of the cooler employees operate forklifts used to receive, manage, and ship produce. In contrast, the majority of the production employees are general laborers, who assist in the process of adding value to the produce by, among other things, cleaning, sorting and bagging the produce. These production employees help operate machinery to wash, dry, process and bag the product. Such equipment is not used in the coolers and the cooler employees have no involvement in operating this equipment. While four cooler employees operate forklifts and transport produce between the cooler and the processing area, the Employer requires its cooler forklift operators to have greater forklift driving skills as they select products from the coolers, maneuver around traffic in the dock bay and coolers, loading and unloading trucks. Cooler employees must have a command of the English language whereas production employees do not. Cooler employees routinely engage in heavy lifting and production employees do not.

Third, there is little contact between cooler and production employees. While cooler and production employees work generally in or around the same facility, they primarily work in different and distinct parts of the facility. There is minimal contact between employees in the two groups during the course of the workday. Even though there was no requirement to do so, the cooler employees use the same entrance, time clock, break room, and park in the same parking lot area, while the production employees use a different entrance, a different time clock, a different break room, and park in a different parking lot area.

Fourth, as interchange, the record shows that there has been very infrequent, with “maybe” two or three permanent transfers. Moreover, there is no record evidence of temporary transfers between Yuma cooler and production employees. These factors in my view are crucial. In *J & L Plate*, 310 NLRB 429, 430 (1993), the Board explained that the evidence of minimal interchange and lack of meaningful contact between employees in the requested unit and comparable employees outside the unit diminished the significance of other factors such as the functional integration between the facilities and a distance between the facilities. The Board has found a low level of interchange among groups of employees indicative of a separate community of interest. *American Security Corporation*, 321 NLRB 1145, 1146 (1996); *Executive Resources Associates*, 301 NLRB 400, 401 (1991). See also *Birdsall, Inc.*, 268 NLRB 186, 191-192 (1983) (Board declined to include in warehouse unit employees engaged in traffic, data processing, insurance, and administration departments where these latter employees had little or no contact or interchange with the warehouse employees.)

Fifth, as to the functional integration of cooler employees with the work function of the production employees, there appears to be almost no overlap of work between the cooler forklift operators or general laborers with production employees with nearly identical titles. In addition, there is not a substantial integration of function between the two groups, since only about 35% of the products received, handled, or shipped out by the Yuma cooler employees involve products processed at the Yuma facility. Moreover, Yuma production employees do not process a substantial majority of the products handled by Yuma cooler employees.

Sixth, cooler employees have different immediate supervisors with a different supervisory chain of command than the production employees. This further reveals the lack of functional integration, a factor which the Board focused on in *Ramada Beverly Hills*, 278 NLRB 691, 692 (1986), a case cited by the Employer. In *Ramada Beverly Hills*, the Board found evidence of the functional integration based upon the substantial overlap of employee job functions and frequent employee contact, neither of which are present in the instant case.

Finally, as to bargaining history, in 1998, the Employer stipulated to an election in a separate bargaining unit of production and maintenance employees, even though the Employer maintained a separate cooler warehouse less than one mile away from that facility. Subsequently, the Employer and the Petitioner entered into a collective-bargaining agreement covering that production and maintenance unit. The Employer has entered into a different collective-bargaining agreement with the Petitioner covering the Employer's Salinas cooler/warehouse facility employees.

The Employer has relied on several cases in support of its contention that a combined unit of cooler and production employees is the only appropriate unit. I find these cases to be distinguishable from the situation before me. The Employer argues that the smallest appropriate unit at Yuma must include both the cooler and production employees because a unit limited to cooler employees would result in a fractured unit. The Employer cites *Seaboard Marine*, 327 NLRB 556, 556 (1990), for the proposition that the Board will not approve combinations of employees that are too narrow in scope or have no rational basis. In *Seaboard Marine*, the union petitioned for a unit of about 17 employees in three classifications, excluding about 181 employees in 12 other job classifications. In rejecting the petitioned-for unit as inappropriate, the Board emphasized that the duties and minimal skills of the petitioned-for employee job classifications "were not distinct" from several other classifications. In *United Operations, Inc.*, 338 NLRB No. 18 (September 30, 2002), the Board distinguished *Seaboard Marine* from the facts before it and explained that the heating, ventilation, and air conditioning (HVAC) technicians employed by the employer were skilled employees performing tasks distinct from the employer's other field employees. I find on the basis of the record before me that situation in *United Operations*, rather than *Seaboard Marine*, is more akin to what is presented here. The vast majority of the Employer's cooler employees, i.e. its forklift operators, are primarily skilled employees who perform tasks distinct from the production general laborers, who make up the majority of production employees.

Citing *Boeing Co.*, 337 NLRB 152 (2001), the Employer contends that there is functional integration of the cooler and production employees at Yuma mandating their inclusion in the same unit. In *Boeing Co.*, the union sought to represent only a unit of employees working in the employers' RAM unit, a group responsible for repairing, inspecting and maintaining C-17 aircraft engines at an Air Force base in Charleston, South Carolina. The employer contended that the only appropriate unit was one that included all of its Charleston-based employees, including employees working in the ESE unit, a group responsible for maintaining, inspecting and repairing the support equipment used by the RAM employees, and employees working in the ROR unit, a group responsible for storing all of the parts and materials needed to repair C-17 aircraft. The Board concluded that the RAM

employees did not possess a community of interest separate and distinct from the ESE and ROR employees that would justify a separate unit of RAM employees. In reaching its decision in *Boeing*, the Board found that the ESE employees had the same skills, qualifications, and certifications as the RAM employees. That is not the case in the instant matter where, for instance, the production employees, unlike the cooler employees, are not required to have a command of the English language, or where the majority of production employees, unlike the vast majority of cooler employees, do not have forklift certifications. In reaching its decision the Board also found that the ESE and ROR employees' work was highly integrated with that of the RAM employees, because the employer's servicing of the C-17 aircraft was only accomplished through the coordinated efforts of the three employee groups. In contrast, in the instant case, even if food processing in Yuma completely stopped at Yuma and products were no longer sent to Yuma for the processing, the Yuma cooler employees, nevertheless, would be able to receive, store, and ship 65% of the approximately 5.5 to 6 million cartons of agricultural products Yuma currently stores and ships.

In sum, based on the record before me, I find that there is not such a strong community of interest between the cooler and the production employees at the Yuma facility so as to mandate inclusion of the production employees in the cooler employee unit. The facts in this case are similar to the facts presented to the Board in *Esco Corp.*, supra 298 NLRB 837. In *Esco*, the employer contended that a unit limited to its warehouse employees was too narrow. The employer was engaged in the manufacture and distribution of fabricated metal products, and argued that its sales and clerical employees at its facility were erroneously excluded from the warehouse unit. At the Esco facility, four warehouse employees worked in the warehouse pulling orders and loading products, two clerical employees and three sales employees worked in an office adjoining the warehouse, and two outside sales employees typically worked outside the facility unless the employer was busy. All employees shared the same fringe benefits. Applying traditional community of interest factors, the Board held that the sales and clerical employees did not share such a strong community of interest as to *require* their inclusion in the warehouse unit that the union had petitioned for. *Id.* at 841. The Board noted that the clericals and sales employees performed separate functions from the warehouse employees, did not interchange or have substantial contact with them, and rarely entered the warehouse. Similarly, in the instant case, the cooler employees have minimal interchange and contact with the production employees. In *Esco*, the Board further noted that the warehouse employees, like the warehouse employees herein, were separately supervised. In *Esco*, the Board stated that the different duties and skills of the Esco employees and the lack of contact between warehouse employees, clerical, and sales personnel, did not reflect a highly integrated operation that required inclusion of the clericals and salespersons in the unit. Similarly, in the instant case, I find that the different duties and skills between the two groups of employees, and their lack of contact do not reflect a highly integrated operation requiring the inclusion of the production employees in the unit.

As noted above, the Petitioner also seeks to include in the unit, the cooler employees detailed at the Employer's Lemoore facility. In *Alamo Rent-A-Car*, 330 NLRB 897 (2000), the Board explained that in determining the appropriateness of a multi-facility unit, the Board evaluates the following factors:

employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history.

In applying these factors to the cooler operations at both the Yuma and Lemoore facilities, I find that the record supports a conclusion that the cooler employees at the two facilities should be included in a single unit. First, the skills and duties of the Yuma cooler facility employees are identical to the skills and duties of the Lemoore facility employees, namely operating a cooler facility for agricultural produce, including transporting produce in and out of the cooler. In fact, Yuma cooler employees are merely detailed to Lemoore for its distinct seasonal work. Thus, the fact that identical job classifications of employees exist at both locations and identical work is being performed supports a finding that the two-facility unit is appropriate. Second, the Yuma cooler employees detailed to Lemoore receive the same pay as at Yuma, plus additional compensation for their travel to Lemoore, in the form of a higher hourly rate and a per diem not paid to them in Yuma. Third, as to interchange, the record shows not just substantial employee interchange but, more accurately, a situation involving identical employees interchange. The Employer hires no new workers but simply details Yuma cooler employees to Lemoore twice a year. Fourth, although the 450 to 460 mile geographical distance between Lemoore and Yuma is significant, the record reveals a close functional integration of the facilities, with the Lemoore facility complementing the Yuma facility as it ramps up or ramps down its operations. Fifth, as to centralized control of management and supervision, not only do the same employees work at both facilities, but a Yuma cooler supervisor supervises the Lemoore employees. Moreover, the same Salinas Human Resources department establishes the labor relations policies at both the Yuma and Lemoore facilities, and applies the same employee handbook to both facilities. Like the situation at Yuma, any disciplinary action, beyond suspending an employee pending investigation, must be taken with the agreement of the Employer's Salinas HR department.

In sum, based on the record before me, I find that there is an overwhelming community of interest between the Yuma and the Lemoore cooler employees so as to warrant the inclusion of the Lemoore cooler employees in the Yuma cooler bargaining unit as the Lemoore employees are all regular employees of the Yuma facility. See, *Waste Management Northwest*, 331 NLRB 309 (2000), where the Board finds a two-facility unit appropriate despite the 42-mile geographical distance between the two facilities, where the employer exercised centralized control over personnel and labor relations policies, there was "common supervision," "identical" skills, duties, and other terms and conditions of employment of the employees at both locations.

Based upon the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time cooler employees employed at the Employer's Yuma, Arizona, and Lemoore, California facilities, including loaders, pre-stagers, rotators, receivers, delivery truck drivers,

sanitation employees, battery changers, general laborers, 12-pallet operators and tube operators.

**EXCLUDED:** All other employees, including production/food processing employees, dispatchers, quality assurance employees, office clerical employees, and guards and supervisors as defined in the Act.

There are approximately 57 employees in the unit found appropriate.

### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**GENERAL TEAMSTERS, WAREHOUSE AND HELPERS UNION, LOCAL 890,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the Regional Director for Region 28, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The Regional Director for Region 28 will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the Regional Director for Region 28 must

receive the list at the NLRB Region 28 Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004, on or before March 16, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by March 23, 2004. A copy of the request for review should also be served on the Regional Director for Region 28.

Dated at Phoenix, Arizona, this 9<sup>th</sup> day of March 2004.

/s/Gordon J. Jorgensen

Gordon J. Jorgensen

Acting Regional Director

National Labor Relations Board

420-0642  
420-1209  
420-1227  
420-2900  
420-4600  
440-1760-6700  
440-3375-8700  
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